IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO.454 OF 2006

M/s.Mutta International — Petitioner
vs.
M/s.Laxmi Polytex Pvt.Ltd. — Respondents

None for the petitioner.

Mr.Narendra Jain for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 13th April, 2007

ORAL JUDGMENT:

The petitioner has challenged an Award dated 28th June, 2006 passed by the Arbitral Tribunal constituted under the Bharat Merchant Chambers Byelaws (for short, "Byelaws").

2. This Court has admitted the matter on 24.1.2007. The matter was called out for hearing and it was adjourned on three occasions for settlement. As the settlement was not possible it was again listed for hearing on 5.4.2007. The matter was adjourned for orders with liberty to the parties to settle the matter if possible. On 9.4.2007 none appeared for the petitioner. The respondent's counsel informed that there is no possibility of settlement in the matter. The matter was heard. As none appeared for the

petitioner, it was adjourned for 13.4.2007 for orders. The matter was called out twice, none appeared for the petitioner again. Therefore this order.

3. The respondent in view of the dispute arose referred the case with Annexures for a claim of Rs.77,316/- with interest and costs and appointed Shri K. Agarwal as their Arbitrator. A copy of the said reference was also sent to the petitioner with directions to appoint the Arbitrators and also to file their written submissions in defence. The petitioner submitted its reply and appointed Shri Surjit Singh as an Arbitrator. Both the Arbitrators have appointed one Shri S. Poddar as Presiding Arbitrator.

4. The petitioner and the respondent have admittedly entered into an Agreement dated 31.1.2006 whereby they agreed to submit to the jurisdiction of Bharat Merchant Chambers (for short, 'Chambers') for adjudicating the dispute as per the Byelaws of the chamber. Both the parties have agreed that unanimous/majority award should be binding on both the parties.

5. As per clause 22 of the Byelaws, it is not necessary for the Arbitral Tribunal to give reasons. The Tribunal therefore in view of this is authorised to pass unreasoned award and as agreed by the parties. Section

31(3) of the Arbitration and Conciliation Act, 1966 (Arbitration Act, 1996) provides that parties can agree for such terms or procedure as contemplated under Section 31(3) which is reproduced as under:

> **31. Form and contents of arbitral award.-**
>
> (1) .....
> (2) .....
>
> (3) The arbitral award shall state the reasons upon which it is based, unless -
>
> (a) the parties have agreed that no reasons are to be given, or
>
> (b) the award is an arbitral award on agreed terms under section 30.

6. In **McDermott International Inc. v. Burn Standard Co.Ltd., (2006) 11 SCC 181.,** the Supreme Court has considered and reiterated in the following paragraphs, that reasons is a mandatory unless dispensed with by the parties or by a statutory provision.

> 55. Another important change which has been made by reason of the provisions of the 1996 Act is that unlike the 1940 Act, the arbitrator is required to assign reasons in support of the award. A question may invariably arise as to what would be meant by a reasoned award.
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> 56. In Bachawat's Law of Arbitration and Conciliation, 4th Edn., pp.855-56, it is stated:
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> "... 'Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief

or action. It is in this sense that the award must state reasons for the amount awarded.

. The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration. In re, 'proper, adequate reasons'. Such reasons shall not only be intelligible but shall be a reason connected with the case which the court can see is proper. Contradictory reasons are equal to lack of reasons.

. The meaning of the word 'reason' was explained by the Kerala High Court in the contest of a reasoned award....

. 'Reasons are the links between the materials on which certain conclusions are based and the actual conclusions....'

. A mere statement of reasons does not satisfy the requirements of Section 31(3). Reasons must be based upon the materials submitted before the Arbitral Tribunal. The Tribunal has to give its reasons on consideration of the relevant material may be ignored....

. Statement of reasons is a mandatory requirement unless dispensed with by the parties or by a statutory provision."

57. In Konkan Rly. Corpn. Ltd. v. Mehul Construction Co. this Court emphasised the mandatoriness of giving reasons unless the arbitration agreement provides otherwise.

7. Therefore, normally the arbitral award should contain the reasons, but as agreed and as permissible the parties have agreed that no reasons are to be given. Therefore, the challenge as raised by the petitioner

that unreasoned award itself is illegal, unjust and contrary to the law is not tenable. The unreasoned award, in the facts and circumstances of the case, in view of the agreed term between the parties is within the framework of the law and the record. The award is therefore valid and need no interference at least on this ground.

8. The present award, in the facts and circumstances of the case cannot be said to be in violation of statutory provisions of law and/or against public policy. This is not the case of manifest failure of justice and/or miscarriage of justice.

9. The submission that the Association had unilaterally referred the matter and therefore not binding is without any substance in view of the agreement by the petitioner to refer the matter to the Tribunal constituted under the Rules. The petitioner admittedly participated in those proceedings. The Arbitrators have also given full opportunity to the petitioner.

10. Having once agreed to refer the matter to such Tribunal and now at this stage the submission in reference to the jurisdiction of the Arbitral Tribunal to try and entertain the dispute has also no force. The award cannot be said to be illegal, null and void. The

Tribunal, based on the agreed procedure, as not required and therefore not given detailed reasons that itself cannot be the ground for raising the issue on bias as raised for the first time in the petition. The award which is based on the documents and material placed by the parties is valid and binding.

11. The expert Tribunal on the subject consists of three members, after examining all the documents submitted by the petitioners and the respondents and after hearing the parties have concluded that the petitioners are required to pay a sum of Rs.63,003.50 being due amount inclusive of interest and Rs.1200/- by way of arbitration cost.

12. The respondent had claimed Rs.77,316/- and interest at 18% p.a. from 16.6.2005. In the background therefore, I am not inclined to interfere with the award. However, considering the judgment of the Supreme Court in **Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy & Anr., 2007 AIR SCW 527** and in view of the extract from the said judgement, the interest awarded by the Arbitrator at 18% p.a. is reduced to 9% p.a. The relevant portion of para 11 reads thus:

> "11..... Here also we may add that we do not wish to interfere with the Award except to say that after economic reforms in our country the interest regime has changed and the rates

> have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%."

13. Taking all this into consideration, the present petition is partly allowed only to the extent of rate of interest as referred above. The Award be modified to the extent that instead of 18% p.a. the rate of interest should be calculated at 9% p.a. from 16.6.2005 to 30.11.2005 and the rate of additional interest should also be at 9% p.a. instead of 18% p.a., as awarded till date of making the payment.

14. The impugned award is maintained on merits accordingly except with the above modification.

15. The petition is disposed of accordingly.

[ANOOP V. MOHTA,J.]